Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 348 of 2002 (S/S)
(Old No. 48022 of 2000)

Anar Singh	……..	Petitioner
	Versus	
State & others	……...	Respondents

Mr. S.S. Adhikari, learned counsel for the petitioner.
Mr. P. Maulekhi, learned Addl. Advocate General for respondents.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner ahs sought writ in the nature of certiorari for quashing the impugned order dated 25.09.2000 (copy Annexure- 1 to the writ petition) passed by the respondent No. 3 whereby the petitioner has been removed from the service.

2) Brief facts of the case, as narrated in the writ petition are that the petitioner was appointed as Constable (Armed Police) on 01.07.1982 and remained posted at Rampur, Shahjahanpur, Pilibhit and lastly at Pithoragarh. In the year 1999he was placed under suspension, but subsequently reinstated without any further action or enquiry. However, on 27.09.2000 he was communicated that he has been removed from the service by the respondent No. 3 vide his order dated 25.09.2000 (copy Annexure- 1 to the writ petition). The petitioner has challenged said order through this writ petition claiming it to be illegal, malafide and arbitrary on the ground that no disciplinary enquiry was done against him.

3) A counter affidavit has been filed on behalf of the respondent Nos. 2 and 3 in which it has been stated that the

impugned order of removal form service was passed by the respondent No. 3 exercising his extra ordinary powers conferred under Rule 9(2)(b) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. It is further stated in the counter affidavit that the petitioner was facing charge of attempt to commit rape and was also imprisoned. Not only this, the petitioner developed contacts with detenues under the Terrorist And Disruptive Activities (Prevention) Act which fact is recorded in his confidential remarks of the year 1999. Giving the details of criminal case No. 512 of 1998 under section 376/ 511 of I.P.C., it is stated in the counter affidavit that the petitioenr was placed under suspension on 08.10.1998 and the suspension order was recalled on 14.12.1998.

4) In the rejoinder affidavit the petitioner has stated that during the pendency of this writ petition, on 12.07.2001 he has been acquitted of the charge of offence punishable under Section 376/511 of I.P.C. A copy of the judgment and order dated 12.07.2001 passed in Session Trial No. 142 of 1999 by learned Sessions Judge Pilibhit has been annexed to the rejoinder affidavit.

5) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit and annexures annexed thereto.

6) The short question for consideration before this Court is that whether the petitioner was removed from the service illegally, arbitrarily or against the principles of natural justice or not?

7) Admittedly, the petitioenr was Constable)Armed Police) appointed by the respondent No. 3. It is also not disputed that his services were governed by the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. It is pertinent to mention here the relevant Rule 8 of said Rules under

which the respondent No. 3 appears to have exercised the power. The said Rule 8 reads as under:

> *8.* ***Dismissal and removal.-*** *(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.*
>
> *(2) No police officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:*
>
> *Provided that this rule shall not apply-*
>
> *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
>
> *(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry; or*
>
> *(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.*
>
> *(3) All orders of dismissal and removal of Head Constable or Constable shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector-General concerned for orders.*
>
> *(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reasons to be recorded in writing awards a lessor punishment.*

(b) Every officer convicted by the court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise.

8) The petitioenr has cleverly concealed the fact in the writ petition that he was facing a charge of the offence punishable under section 376/511 of I.P.C. However, when in the counter affidavit this fact was highlighted, the petitioenr with the rejoinder affidavit annexed copy of the judgment and order by which he was acquitted (copy Annexure- R.A. 1 to the rejoinder affidavit) showing that he had been acquitted during the pendency of the writ petition. Learned counsel for the petitioner drew my attention to the principle of law laid down in Abdul Bari V. State of U.P. and others (2000) 1 UPLBEC (Sum.) 13 and argued that the disclosure of ground of termination casts stigma on the employee. In my opinion, the said case law does not help the present petitioner for, the petitioner in said case was not covered under the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 in which extra ordinary powers are conferred on the Superintendent of Police for the purposes of maintaining discipline among the police officers. In Abdul Bari's case, the petitioner was a Home Guard and his services were covered under U.P. Home Guards Adhiniyam, 1963 and not under the Police Rules. Apart from this, the said Home Guard was terminated without assigning any reason while in the present case the petitioner has been removed from the service under Rules 8 of aforesaid Rules of 1991. As such there is no question of stigma. Otherwise also, in State of U.P. Vs. Krishna Kumar Sharma (1997) 11 SCC 437 and in State of U.P. Vs. Kaushal Kishore Shukla (1991) 1 SCC 691 the Apex Court has held that merely by disclosing the reasons of termination in the counter affidavit the nature of simpliciter termination order does not change.

9) Mr. S.S. Adhikari, learned counsel for the petitioner further drew my attention to the principle of law laid down in Balveer Singh V. State of U.P. and others (1996) 1 UPLBEC 316 and argued that without subjective satisfaction shown in written the powers under Rules 8 cannot be exercised. Here, at this state, it is pertinent to go through the impugned order of removal passed by the respondent No. 3, which reads as under:

आदेश

उत्तर प्रदेष अधिनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड और अपील) नियमावली 1991 के नियम 3– (क) में परिभाषित नियुक्ति प्राधिकारी के अनुसार अधोहस्ताक्षरी आरक्षी 187 स0पु0 अनार सिंह का नियुक्ति प्राधिकारी है । अतः इस नियमावली के नियम –8 के अन्तर्गत दण्ड देने के लिये सक्षम है।

आरक्षी 187 स0 पु0 अनार सिंह के विरूद्ध मेरे समक्ष रखी गयी सूचना / आख्या के अध्ययन से मेरा समाधान हो गया है कि आ आरक्षी 187 स0 पु0 अनार सिंह के विरूद्ध ऐसी सूचना / तथ्य उपलब्ध है, जिसके आधार पर मैं सन्तुष्ट हूँ कि आरक्षी 187 स0 पु0 अनार सिंह इस नियमावली के द्वारा यथा अनुघ्यात उचित जांच करना युक्ति–युक्ततः व्यवहारिक नहीं है, चूंकि यह स्वयं एक पुलिस अधिकारी होते हुए व्यक्तिगत स्वार्थ के लिये अपराधियों से मेल जोल रख कर उन्हें विधिक कार्यवाही से बचाता है । इसके अपराधियों से सम्बन्ध होने के कारण इसके विरूद्ध उचित जांच की कार्यवाही में इसके भय से साक्षियों द्वारा साक्ष्य नहीं दिया जायेगा जिससे इसके विरूद्ध दण्डात्मक कार्यवाही करना सम्भव नहीं होगा। अतः मैं इस नियमावली के नियम –8 (2) (ख) सपठित भारत के संविधान के अनुच्छेद 311 (2) (बी) के अन्तर्गत सषक्त प्राधिकारी होते हुए आरक्ष्झी 187 स0 पु0 अनार सिंह को सेवा से पदच्युत करने / सेवा से हटाने का आदेष देता हूँ। यह आदेष तत्काल प्रभाव से प्रभावी होगा ।

(राजकुमार)
पुलिस अधीक्षक,
पिथौरागढ़।

10) Perusal of the aforesaid order makes it clear that the respondent No. 3 has given the reason for his satisfaction for not holding the departmental enquiry. It is categorically mentioned in the impugned order of removal that the petitioenr has contact with the criminals whom he saves. It is further mentioned in the order that due to this reason the witnesses on account of the fear would not give evidence against him and the departmental

enquiry will not be practically possible to be conducted. Even in Balveer Singh's case (Supra) referred by learned counsel for the petitioner in which Jaswant Singh's case A.I.R. 1991 SC 385 has been quoted, it is clearly mentioned " it was incumbent on the respondents to disclose the Court the material in existence at the date of passing of impugned order in support of subjective satisfaction." That being so the fact that in the year 1999 in the annual confidential remarks of the petitioner his association with the TADA detenues has been alleged to be on record coupled with the charge he was facing on the date when the impugned order was passed (though later acquitted), it cannot be said that the respondent No. 3 has passed impugned order without any subjective satisfaction.

11) In these circumstances, for the discussion as above, this Court is not inclined to interfere with the impugned order dated 25.09.2000. Accordingly, the writ petition is dismissed. No order as to costs.

(P.C. Pant, J.)

Dt.: 30th September, 2004
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